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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON
5

6 UNITED STATES OF AMERICA,)
7) No. 17-CR-033-JLQ
8 Plaintiff,)
9 vs.) MEMORANDUM OPINION RE:
10 RALEIGH ZIMMERMAN,) SENTENCING
11)
12 Defendant.)
_____)

13 The sentencing hearing was held on September 15, 2017. Defendant was present
14 and represented by Assistant Federal Public Defender Matthew Campbell. Assistant
15 United States Attorney James Goeke appeared for the Government. This Opinion
16 memorializes and supplements the court's oral rulings.

17 **I. Introduction and Background**

18 Defendant Zimmerman pled guilty on July 14, 2017 to Count III of the Indictment
19 charging possession of child pornography. The plea was pursuant to a Fed.R.Crim.P.
20 11(c)(1)(C) Plea Agreement in which both the Government and the Defendant agreed to
21 a binding sentence recommendation of between zero and 30 months. The parties also
22 agreed to a 15-year term of supervised release. The Government agreed in the Plea
23 Agreement to dismiss Counts I and II. The court set the matter for sentencing and
24 reserved acceptance of the 11(c)(1)(C) Plea Agreement until after review of the
25 Presentence Investigation Report ("PSR").

26 The draft PSR was filed on August 24, 2017. Defendant timely filed Objections
27 on September 5, 2017 (ECF No. 35) and filed a 48-page Sentencing Memo with 55-pages

1 of exhibits. (ECF No. 36). The Government filed a Notice of Review of the PSR (ECF
2 No. 41) which did not raise any objections to the PSR.

3 **II. Discussion**

4 Defendant objected to a 2-level increase of the offense level in the draft PSR for
5 “distribution”. He argued he pled only to possession and there is insufficient evidence
6 of knowing distribution. He argued that although others may have been able to access
7 his materials through the peer-to-peer software, such access may be the result of a default
8 setting on the software and not demonstrate knowing distribution. On September 11,
9 2017, Probation Officer Kennicutt filed an Addendum (ECF No. 38) which agreed the
10 2-level enhancement for distribution was not supported. Officer Kennicutt further agreed
11 Special Condition #1 should be revised. The final Guideline calculation was an offense
12 level 28, criminal history category I, and Guideline range of 78 to 97 months.

13 The court accepted the 11(c)(1)(C) Plea Agreement wherein the parties agreed the
14 sentence would be between 0 and 30 months. Defendant’s mental health history plays
15 an important role in the consideration of an appropriate sentence. The PSR covers his
16 mental health problems extensively (ECF No. 39, PSR ¶ 66-88). Counsel for Defendant,
17 in his Sentencing Memo, states Probation did an “outstanding job” of summarizing the
18 records. Defendant claims mental health treatment is essential to ensuring no recidivism
19 takes place and argues he will likely not receive good mental health treatment in a BOP
20 facility.

21 Defendant has a mental health history including bipolar disorder, depression, and
22 delusions. He was first diagnosed as bipolar when he was in college in 1999. (PSR ¶ 66).
23 He has been hospitalized for delusions and suicidal ideation on several occasions since
24 2011. (PSR ¶ 69-87). Defendant was involuntarily committed to Calispel Evaluation and
25 Treatment Center during the last week of April 2016, shortly before law enforcement
26 discovered the pornography at issue in May/June 2016. (Id. at ¶ 87).

1 Defendant, despite these mental health problems, or perhaps between episodes of
2 mental health disturbance, has been able to graduate from college and then go on to
3 graduate studies, earning his Doctorate of Pharmacy in 2009. (Id. at ¶ 93). Defendant
4 made various unsuccessful attempts at employment as a pharmacist between 2009 and
5 2011, but they were of short-term duration. (Id. at ¶ 94-96). Defendant advised he was
6 let go from his last job as a pharmacist due to issues related to his mental health. (Id. at
7 ¶ 95). More recently, Defendant has improved the control of his mental health problems.
8 He enrolled in the Program for Assertive Community Treatment (“PACT”) in January of
9 2016. (Id. at ¶ 86). He graduated from the PACT program in May 2017. Defendant is
10 currently taking medications and attending a counseling session every two weeks. (Id. at
11 ¶ 88). Defendant has submitted the August 4, 2017 letter of Dr. Challem, a psychiatrist,
12 which states Defendant “seems symptom free and I expect him to continue to do well.
13 He seems very committed to doing whatever he can to remain mentally healthy.” (ECF
14 No. 36-2).

15 This is a unique case, and one in which a sentence substantially below the
16 Guideline range is reasonable. The Government has recognized the uniqueness of the
17 case, and entered into a reasonable Plea Agreement. At sentencing, the Government
18 recognized the difficulty of this case and did not make a recommendation for a specific
19 term of custody. Defense counsel has filed a lengthy and convincing Sentencing Memo,
20 supported by exhibits. The United States Probation Office has prepared a thorough PSR
21 which contains great detail concerning Defendant’s mental health history. The Probation
22 Officer has raised the concern that a period of incarceration could lead to decomposition
23 of mental health, which may then elevate the risk to the community. Officer Kennicutt
24 has recommended a nominal period of incarceration of one day followed by a period of
25 home detention and a 15 year term of Supervised Release with appropriate conditions
26 therein.

1 The court has thoroughly considered all the § 3553(a) factors. Application of the
2 § 3553(a) factors supports the Defendant and Probation Officers' recommendations of
3 a sentence of 1-day, a period of home confinement, and a substantial period of supervised
4 release. The court has considered the history and characteristics of the Defendant,
5 including: 1) he has no countable criminal history; 2) he has significant mental health
6 problems, which he appears to be receiving adequate treatment for and is currently stable;
7 3) Defendant has struggled to be productive and achieve goals despite his mental health
8 problems, as evidenced by his obtaining a doctorate degree in pharmacy. The court has
9 considered this case involves the possession of images and Defendant played no role in
10 the actual production of the pornography. The court has considered the need for the
11 sentence imposed to promote respect for the law and provide appropriate punishment.
12 As Defendant's briefing sets forth, there are significant collateral consequences from the
13 conviction, including sex offender registration, which will provide punishment and
14 promote respect for the law. Additionally, Defendant will be on supervised release for
15 a period of 15-years. Considering deterrence, it has been recognized it is unlikely an
16 individual suffering from mental health problems is very receptive to deterrence. See
17 *United States v. Cantu*, 12 F.3d 1506, 1516 (9th Cir. 1993) ("Deterrence has less value as
18 a rationale for punishment because people with reduced capacities are less susceptible to
19 a system of punishment and reward: the grip of their disorders make them less able both
20 to identify and to conform their actions to an appropriate course of conduct."). Regarding
21 sentencing disparity, Defendant has devoted 15-pages of his Sentencing Memo to listing
22 108 cases where a defendant in a pornography case was given minimal jail time, home
23 confinement, probation, etc.

24 The issue of protection of the public is more complicated. The Defendant does not
25 appear to have any history of actual violence, but he has made threats to himself and
26 others, apparently stemming from his mental problems. However, jail time could disrupt
27 the progress Defendant has made towards his mental health, could be very serious for his

1 health, and also perhaps cause him to be less stable when released. Both Defendant and
2 Probation express concern about adequate mental health treatment if incarcerated. The
3 Probation recommendation states: "A sentence of incarceration may have the effect of
4 leading to a decomposition of the defendant's mental health, thus elevating his risk to the
5 community." (ECF No. 40, p. 2). The court has also considered that Defendant has been
6 on pretrial release for over six months, has been subject to monitoring and a curfew, and
7 has not violated any of the conditions of his release.

8 **III. Conclusion**

9 The court accepts the parties' F.R.Crim.P. 11(c)(1)(C) Plea Agreement. After
10 consideration of all the 3553(a) factors, the court concluded a sentence of 1-day
11 incarceration, followed by 6-months home confinement, and a 15-year period of
12 supervised release is sufficient, but not greater than necessary.

13 **IT IS HEREBY ORDERED:**

14 Judgment shall be entered in accord with the court's oral pronouncement of
15 sentence and this Order.

16 **IT IS SO ORDERED.** The Clerk shall enter this Order and furnish copies to
17 counsel and the United States Probation Office.

18 Dated this 19th day of September, 2017.

19 s/ Justin L. Quackenbush
20 JUSTIN L. QUACKENBUSH
21 SENIOR UNITED STATES DISTRICT JUDGE
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